

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 477 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.
2. To be referred to the Reporter or not? NO.
3. Whether Their Lordships wish to see the fair copy of the judgement? NO.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.
5. Whether it is to be circulated to the Civil Judge?
NO.

STATE OF GUJARAT

Versus

KOLI PUNJA RAMDE

Appearance:

MR U.A.Trivedi, APP for Appellant.

MR BS SUPEHIA for Respondent No. 1, 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 21/11/98

ORAL JUDGEMENT

1. The State of Gujarat has filed this appeal under Section 378 of the Code of Criminal Procedure, challenging the judgment and order, dated 28-2-91, passed by the learned Judicial Magistrate, First Class, Porbandar, in Criminal Case No.5387 of 1986, whereby the learned Magistrate acquitted the respondents-original accused from the charges framed against them under

Sections 326, 325, 323, 114 of IPC and Section 135 of Bombay Police Act.

2. The complainant-Santokben Naran, resident of Ratiya, on 13-7-86 at about 7-00 a.m. in the morning was returning to her residence from her Vadi. On the way, she had picked up one cloth bag which was lying on the road. In the meantime, respondent No.1 who was accompanied by respondent No.2 came there and asked the complainant whether she had found his bag. The complainant told the respondents that she had picked up one bag. The respondent No.1 told her that the bag belongs to him. On saying this, the complainant threw away the bag on the road. Therefore, the respondent No.1 got excited and gave blows with iron shod stick on the hands as well as on the head of the complainant. As a result of the blows given by the stick, the complainant sustained injuries on her head and two hands. Thereafter, the complainant was taken to Madhapur Hospital for treatment, but as the doctor was not available at Madhapur, the complainant was taken by her husband Naran Pola to Porbandar. At Porbandar Hospital the complainant was examined by PW 3 Dr. Manjibhai Khodabhai. On examination it was found that the complainant has sustained injuries on her head and had also sustained fractures on her two hands. At Porbandar Hospital, the complainant lodged complaint against the respondents. The complainant was admitted as an indoor patient in the hospital for 7 days for the treatment of injuries sustained by her. After recording of the complaint, PW 10 Ratilal Mansukhlal Bhatt took over the investigation and drew the panchnama of the scene of offence and arrested the respondents and recovered the mudamal stick. The Investigating Officer recorded the statements of the witnesses and after completing the investigation submitted the charge sheet against the respondents in the court of J.M.F.C., Porbandar, which came to be registered as Criminal Case No.5387 of 1986.

3. Charge Exh.3 came to be framed against the respondents for the offences punishable under Section 326, 114 of IPC and Section 135 of the B.P.Act. Respondents pleaded not guilty and claimed to be tried. The prosecution in support of its case examined the complainant Santokben Naran at Exh.13, Naran Pola at Exh.16, Dr.Manjibhai Khodabhai at Exh.19 and other witnesses with regard to different panchnamas and the Police Officer who had recorded the complaint and carried out the investigation.

4. After the prosecution case was over, the learned

Magistrate examined both the respondents and their statements came to be recorded under Section 313 of the Code of Criminal Procedure. In the further statements, the respondents have stated that because of the dispute with regard to the lands between the husband of the complainant and the father of the respondent No.1, a false case has been filed against them and they have not committed any offence and are falsely involved in this case.

5. The learned Magistrate after appreciating the oral as well as documentary evidence and the arguments advanced by the respective advocates of the prosecution and the defence, acquitted the respondents on following grounds :

- (i) That the mudamal stick which was alleged to have been recovered from the respondent No.1 would not have caused the injuries as narrated by the complainant.
- (ii) That the important witnesses were not examined by the prosecution.
- (iii) That the evidence of the complainant was not corroborated by the F.I.R. Exh.14.
- (iv) That the prosecution had not examined independent witnesses who had witnessed the incident.

6. The order of acquittal of the learned Magistrate is challenged by the State of Gujarat by filing this appeal.

7. Learned A.P.P. Mr. U.A.Trivedi has taken me through the entire evidence on record and submitted that the learned Magistrate erred in not relying the evidence of the injured complainant-Santokben. It is submitted that the injured complainant had sustained serious injuries which was corroborated by the medical evidence, and therefore, the acquittal of the respondents be set aside and this appeal be allowed.

8. The complainant Santokben in her evidence at Exh.13 categorically stated that after the respondent No.1 had inflicted the stick blow, she had fallen down and when she got up, one Rama Punja came there and he had taken her to her house. Thereafter, Rama Punja had gone to call her husband Naran Pola. In her cross-examination, she admitted that at the place of the incident many residential houses are situated and many persons had gathered. It may be stated that no independent witnesses were been examined by the prosecution. In F.I.R. Exh.14, the complainant has not

stated that Rama Punja had come at her rescue and had taken her at her house and thereafter had gone to call her husband Naran Pola. This casts serious doubt in the mind of the Court about the conduct of the complainant. Therefore, in my opinion, the F.I.R. lodged by the complainant is quite contrary to the oral testimony of the complainant before the Court. According to the complainant, the respondent No.1 was armed with iron shod stick. The mudamal stick which was recovered from the respondent No.1 was a simple stick with which the injuries sustained by the complainant could not have been inflicted. The evidence of Naran Pola who is the husband of the complainant is also contrary to the F.I.R. According to Naran Pola, he was informed by one Rama Punja about the incident, but in the F.I.R. the complainant has not stated that Rama Punja had come and he had informed the witness Naran Pola. Therefore, looking to the conduct of the complainant and her husband Naran Pola, the prosecution is not able to prove beyond reasonable doubt that the respondent No.1 had inflicted the stick blow on the head and hands of the complainant and the respondent No.2 had given fists and kick blows to the complainant. There are many contradictions and infirmities in the evidence of the prosecution which casts serious doubt about the version of the complainant. Therefore, in my opinion, the prosecution has not been able to prove beyond reasonable doubt the charges levelled against the respondents.

9. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence and the learned Judge who had an advantage of observing demeanour of witnesses. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convincing me to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be rejected.

10. As a result of the foregoing discussion, the appeal fails and is hereby dismissed.

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